

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:18-MC-103-MOC-DCK**

AMERICAN BANK CENTER,

Plaintiff,

v.

STEPHEN BARKER,

Defendant.

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ORDER

THIS MATTER IS BEFORE THE COURT on “American Bank Center’s Motion To Charge Limited Liability Company Interests Of Stephen D. Barker” (Document No. 10). This motion has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and is ripe for disposition. Having carefully considered the motion, the record, and the arguments of counsel during a telephone conference, the undersigned will grant the motion.

BACKGROUND

Plaintiff American Bank Center (“Plaintiff”) initiated this action on June 4, 2018, with the filing of a “Clerk’s Certification Of A Judgment To Be Registered In Another District” (Document No. 1) and a “Judgment” (Document No. 1-1) (the “Judgment”) issued by the United States District Court for the District of North Dakota.

Plaintiff filed the pending “American Bank Center’s Motion To Charge Limited Liability Company Interests Of Stephen D. Barker” (Document No. 10) on October 3, 2018. That motion has now been fully briefed, including supplemental briefing requested by the Court. See (Document Nos. 11, 12, 13, 19, and 20).

On November 19, 2018, following no objection by Plaintiff, the Clerk of Court issued an “Order Designating Exempt Property” (Document No. 14) granting Defendant’s “Notice To Claim Exempt Property (Statutory Exemptions)” (Document No. 6). The Clerk of Court then issued a “Writ Of Execution” (Document No. 15) on December 21, 2018.

The undersigned conducted a telephone conference on April 10, 2019, and considered the parties’ status update and arguments regarding this case. Counsel for parties were directed to attempt to resolve this matter and provide the Court a proposed order. Despite counsel’s efforts, the parties have been unable to resolve this matter and have submitted supplemental briefs and their own proposed orders. See (Document Nos. 18, 19, and 20).

DISCUSSION

The crux of Plaintiff’s pending motion is a request for an Order from this Court charging the limited liability company interests held by Defendant Stephen D. Barker (“Barker” or “Defendant”) with payment of the Judgment, plus post-judgment interest, entered for Plaintiff against Barker in the United States District Court for the District of North Dakota, Case No. 1:17-CV-195, on April 30, 2018, and also registered with this Court on June 4, 2018,. (Document No. 10); see also (Document Nos. 1 and 1-1).

The Judgment against Barker totals \$10,287,808.60, plus post-judgment interest. (Document No. 1-1). The Judgment remains unsatisfied.

Barker owns a 98 percent interest in Merlin Holdings, LLC, a Nevada limited liability company (“Merlin Holdings”), and a 99 percent interest in Grand Dakota Hospitality, LLC, a Delaware limited liability company (“Grand Dakota Hospitality”) (together with “Merlin Holdings,” the “Direct LLCs”). Merlin Holdings and Cibix Management, Inc., which is wholly owned by Barker, together own interests in nine other limited liability companies: 217 Tremont

Partners LLC, Clarkston Hotel Group, LLC, Grand Dakota Development, LLC, Grand Dakota Partners LLC, Shelby Hospitality Group, LLC, Shelby Land Partners, LLC, Catellus Group, LLC, Rainier Group, LLC, and Catellus Capital, LLC (all together, the “Indirect LLCs”).

Based on Plaintiff’s motion and supporting memoranda of law, and the entire record in the case, the undersigned finds that Barker’s ownership interests in the Direct LLCs are subject to the entry of a charging order under North Carolina General Statute § 57D-5-03. Plaintiff shall have only the right to receive the distributions, allocations, dividends, and other payments that otherwise would be paid to Barker with respect to his ownership interest in either of the Direct LLCs.

IT IS, THEREFORE, ORDERED that American Bank Center’s Motion To Charge Limited Liability Company Interests Of Stephen D. Barker” (Document No. 10) is **GRANTED**.

IT IS FURTHER ORDERED that:

1. Barker’s ownership interests in the Direct LLCs are charged with payment of the Judgment;
2. A Direct LLC shall make no distributions, allocations, dividends, or any payment whatsoever to Barker on account of his ownership interests in such Direct LLC until further Order of the Court. This expressly prohibits Merlin Holdings from making any distributions, allocations, dividends, or payments to Barker that Merlin Holdings derives or receives from its ownership interests in the Indirect LLCs;
3. Each Direct LLC shall pay directly to Plaintiff all distributions, allocations, dividends, or payments that otherwise would be paid to Barker with respect to his ownership interest in such Direct LLC in satisfaction of the Judgment until the Judgment is satisfied or further Order of the Court. Such payment shall be by check made out to American Bank Center and delivered to

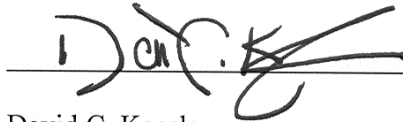
Plaintiff's counsel, Scott M. Tyler and Kathryn G. Wellman, Moore & Van Allen PLLC, 100 North Tryon Street Suite 4700, Charlotte, NC 28202;

4. If Barker receives any distributions, allocations, dividends, or payments on account of his ownership interest in a Direct LLC in violation of this Order, Barker shall immediately deliver all such distributions, allocations, dividends, or payments on account of his ownership interest to Plaintiff. Such payment shall be by check made out to American Bank Center and delivered to Plaintiff's counsel, Scott M. Tyler and Kathryn G. Wellman, Moore & Van Allen PLLC, 100 North Tryon Street Suite 4700, Charlotte, NC 28202; and

5. Barker is enjoined and prohibited from circumventing the terms or purposes of this Order.

SO ORDERED.

Signed: July 17, 2019



David C. Keesler
United States Magistrate Judge

